92-827

Supreme Court, U.S.
FILED
OCT 13 1992
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October, 1992, Term

RAYMOND H. COPP, JR., Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR WRIT OF CERTIORARI

To The United States Court of Appeals
for the First Circuit

APPENDIX

Alfred D. Ellis
Counsel of Record
Marshall D. Stein
Cherwin & Glickman
One International Place
Boston, MA 02110-2622
617-330-1625

COUNSEL FOR PETITIONER

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UNITED STATES DISTRICT COURT DISTRICT
OF MASSACHUSETTS

RAYMOND H. COPP, JR., Taxpayer-Petitioner	)	91-11214-N
v.	)	
UNITED STATES OF AMERICA, Respondent.	)	

Petition to Quash Internal Revenue Service Summons Pursuant to 26 U.S.C. § 7609(b)

INTRODUCTION

The Internal Revenue Service previously issued a summons with respect to Goldman Sachs & Co. on January 14, 1991. (See Exhibit "A"). On January 30, 1991, the taxpayer filed a Petition to Quash that summons in the Southern District of New York. The case was docketed for expedited hearing on March 12, 1991. Prior to the scheduled hearing date the I.R.S. withdrew the initial

summons and has substituted a summons substantially similar, but filed on the Boston office of Goldman Sachs & Co.

Petitioner, by his attorney, Alfred D. Ellis, allege upon information and belief:

1. This is a proceeding pursuant to 26 U.S.C. 7609 (b)(2) to quash a summons served on Goldman Sachs & Co. ("Goldman").

2. This Court has jurisdiction of this proceeding since Goldman, the person summoned is a corporation with offices in the District of Massachusetts and was served with the summons in this district.

3. Petitioner Raymond H. Copp, Jr. is an individual who resides in

Meredith, New Hampshire 03253.

4. On or about April 5, 1991 the Internal Revenue Service issued a summons to Goldman. A copy of the summons is attached as Exhibit "B".

5. On its face, the summons states that it relates to the tax liability of Raymond H. Copp, Jr. for the periods 1985-1989. The summons requires the production by Goldman on May 1, 1991 of records made and kept of the business transactions and affairs of Petitioner who is identified in the description of the records contained in the summons.

6. Goldman is a third party record

keeper within the meaning of 26 U.S.C. § 7609 (a)(3).

7. The withdrawal of the summons from one forum and its reissuance in another indicates that the IRS was shopping for a forum which would be amenable to the document request. It is appropriate to sue a corporation in any place it is subject to personal jurisdiction. 28 U.S.C.A. § 1391. By maintaining offices in New York and Boston, Goldman is subject to personal jurisdiction in both states. New York is the appropriate forum because that is the location of its corporate headquarters where Goldman

maintains its clients' records. The documents sought are being produced from that office. It has been held that the location of books and records is a factor in determining if venue is proper at a particular location. American Standard v. The Bendix Corp., 487 F.Supp 254 (1980). Therefore, the plaintiff's original choice of forum was appropriate and there was no apparent necessity to change it.

8. However, after a hearing date was set regarding the motions to quash the January 14, 1991 summons, the Assistant U.S. Attorney Stephen Froot for the Southern District of New York

advised the I.R.S. that the summons was overbroad. The I.R.S. then withdrew the summons. On April 5, 1991, they issued a new summons which is virtually identical to the other one (except to exclude the years 1990 and 1991). There was no attempt made to limit the scope of the document request. The major difference was that the new summons was served in Boston.

9. Venue is improper if the plaintiff's choice of one forum over another appropriate forum is motivated by his desire to avoid specific precedents. It has been stated, that forum

shopping is looked down upon when the choice of venue is based upon the avoidance of precedent in a particular district:

> "Had plaintiffs selected this forum to avoid specific precedents in the Northern District, the case for a transfer [by the defendant] would have been far stronger. Just as this district's local rules are designed to prevent shopping for individual judges - and thereby for the application of some anticipated view of the law - efforts to select one district to avoid or to obtain specific rulings of another district court should be disfavored and discouraged." In Matter of Cheeseman, et al. v. Carey, 485 F.Supp 203 (S.D.N.Y. 1980)

The sequence of events with regard to the January 14, 1991 summons indicate that the I.R.S. was forum shopping to avoid a court where the summons would not stand.

10. A summons issued pursuant to I.R.C. § 7602(a)(2) can be made to "any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax ...". A party cannot be compelled to produce any document over which it has no control. Traub v. U.S., 232 F.2d 43 (1955). It is the corporate headquarters who often

enjoys this control over its own books and records. Re Rivera, 79 F.Supp 51 (1948). Therefore, the original summons of January 14, 1991 was correctly served in New York, and should be maintained there. It is inappropriate to make this request on the Boston office which does not enjoy this same level of control.

11. Moreover, the issuance of this summons constitutes harassment to the taxpayer. This summons is substantially the same as the one the Internal Revenue Service issued on 1/14/91 (See Exhibit "A"). On January 31, 1991, the taxpayer filed a motion in the

Southern District of New York to quash that summons, which the Government subsequently withdrew. However, the only attempt made to modify the original request was to delete years 1990 and 1991. The "reissuance" of the summons has resulted in the duplication of efforts and expenses to the taxpayer.

12. Upon information and belief a Justice Department referral is in effect with respect to the taxpayer and no I.R.S. summons may be issued pursuant to 26 U.S.C. 7602 (c). The summons should be quashed because it was issued by the Internal Revenue

Service after the Department of Justice had begun investigating the taxpayer's potential criminal liability.

13. The summons requests records of the taxpayer for the years 1985-1989. The civil audit of the taxpayer occurring at the Laconia, New Hampshire office of the I.R.S. has largely been limited to the 1988 tax year. This summons was reissued before the taxpayer had an opportunity to assemble documents for any of the prior years. The summons is vague and overbroad and constitutes an unreasonable search and seizure in violation of the Fourth Amendment to the

Constitution of the United States.

14. The materials sought under the summons must be limited to the ends sought and is unreasonable "if it is overbroad, out of proportion to the ends sought", or, if it is "so unrelated to the matter properly under inquiry as to exceed the investigatory power", U.S. v. Harrington, 388 F.2d 520 (2d Cir. 1968), citing McMann v. SEC, 87 F.2d 377 (2d Cir. 1937), and U.S. v. Morton Salt, Co., 338 US 632 (1950). It has also been recognized that a stricter standard of relevance is applied when the summons is directed to

a third party, as opposed to the taxpayer himself. U.S. v. Harrington, 388 F.2d 520 (2d Cir. 1968), Garpeg v. U.S., 583 F. Supp. 789 (U.S.S.D. N.Y. 1984), U.S. v. The Freedom Church, 613 F.2d 316 (1st Cir. 1979).

15. The summons served seeking all records for the period from 1985-1989 is overbroad and misproportionate to the end sought. If allowed enforcement of the summons will constitute a "fishing expedition" through the petitioners records in excess of the relevant scope of the summons power. See U.S. v. Richards, 631 F.2d 341 (4th Cir.

1980).

16. Upon information and belief the government cannot demonstrate the particularity necessary for the government to carry its burden required under the standard for relevancy for all tax years prior to and following the year under audit (1988). See U.S. v. Goldman, 637 F.2d 664 (9th Cir. 1980).

17. Petitioner requests an evidentiary hearing to resolve the issues raised by this petition.

18. The Petitioner's representative has sent a copy of this motion to the other side and to the party summoned. Enclosed is the

certificate of mailing.

19. The Petitioner's representative made a good faith attempt to contact the Revenue Officer regarding this motion. The Revenue Officer insisted upon enforcement of the summons, and would not accept submission of documents in part until completion of the search by the taxpayer of all relevant records.

WHEREFORE, Petitioner respectfully demands judgment quashing the Summons and granting such other and further relief as the Court may deem just, including Petitioner's reasonable attorney's fee.

DATED: Boston, MA
April 11, 1991

A-15(a)

SUMMONS

Department of the Treasury
Internal Revenue Service

Jean

Raymond H. Copp, Jr.
P.O. Box 701
Meredith, NH 03253

EXHIBIT "6"

matter of _____ SSN: 001-46-4840

al Revenue District of Portsmouth Periods 1985,1986,1987,1986,1989

Commissioner of Internal Revenue
Jeane Snow - Vice President Administration
Goldman Sachs & Co.
Exchange Place
53 State St.
Boston, MA 02109

C: hereby summoned and required to appear before Ernest Van Loan, Revenue Agent
of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal laws concerning the person identified above for the periods shown.

Records of all accounts in the name of Raymond H. Copp, Jr. and records of all accounts over which he had signature authority in any capacity for the years 1985 through 1989. All records of bonds purchased by Raymond H. Copp, Jr. in any capacity during the years 1985 through 1989.

siness address and telephone number of Internal Revenue Service officer named above:

719 N. Main St., Laconia, NH 03246 (603) 528-8794

Place and time for appearance:

at ~~Goldman Sachs & Co., Exchange Place, 53 State St., Boston, MA 02109~~

on the 8th day of May, 19 91 at 10:00 o'clock a.m.

Issued under authority of the Internal Revenue Code this 10th day of April, 19 91

Ernest Van Loan — Revenue Agent
Signature of Issuing Officer — Title

Signature of Approving Officer (if applicable) — Title

BEST AVAILAB

A-15(b)

Summons

Department of the Treasury
Internal Revenue Service

Jean

Raymond H. Copp, Jr.
P.O. Box 701
matter of Meredith, NH 03253 SSN: 001-46-4840

EXHIBIT "B"

al Revenue District of Portsmouth Periods 1985,1986,1987,1988,1989

ommissioner of Internal Revenue
Jeanne Snow - Vice President Administration
Goldman Sachs & Co.
Exchange Place
53 State St.
Boston, MA 02109

hereby summoned and required to appear before Ernest Van Loan, Revenue Agent
of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data
the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal
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at ~~Goldman Sachs & Co., Exchange Place, 53 State St., Boston, MA 02109~~

on the 8th day of May 19 91 at 10:00 o'clock a.m.

Issued under authority of the Internal Revenue Code this 10th day of April 19 91

Ernest Van Loan Revenue Agent
Signature of Issuing Officer Title

Signature of Approving Officer (if applicable) Title

23304.1

LE COPY

Respectfully submitted,
Raymond H. Copp, Jr. by his attorney,

_____

Alfred D. Ellis,, Esquire
CHERWIN & GLICKMAN
One International Place
Boston, MA 02110

UNITED STATES DISTRICT COURT DISTRICT
OF MASSACHUSETTS

RAYMOND H. COPP, JR., Taxpayer-Petitioner	)	91-11214-N
v.	)	
UNITED STATES OF AMERICA, Respondent.	)	

ANSWER OF THE UNITED STATES TO
PETITION TO QUASH

NOW COMES the United States and responds to the above-captioned petition to quash as follows:

The United States responds to the first unnumbered paragraph of the petition as follows: It admits it issued a summons to Goldman Sachs & Co. ("Goldman Sachs") on January 11, 1991, but denies the date of issuance alleged, a true copy of that summons is attached to the petition without an identifying exhibit number; it

admits taxpayer filed of a petition to quash as alleged, admits docketing in the Southern District of New York, as alleged, admits withdrawal of the summons, admits serving a new summons on the Boston office of Goldman Sachs, but does not respond to allegations regarding comparisons of the two summonses, copies of which are attached to the petition, as those documents speak for themselves.

The United States responds to the numbered allegations of the petition as follows:

1. It admits the allegations of paragraph 1.

2. It admits the allegations of paragraph 2.

3. It admits the allegations of paragraph 3.

4. It admits the allegations of paragraph 4, except that the summons is not identified by exhibit number.

5. It responds to the allegations of paragraph 5 by that the asserting that the summons, a copy of which is attached to the petition, speaks for itself as to its contents.

6. It admits the allegations of paragraph 6.

7. It denies the IRS was forum shopping, does not respond to the allegations of law regarding proper forums, denies New York is the appropriate forum for this action, is without knowledge or information sufficient to form a belief as to where Goldman Sachs keeps its clients, records, does not respond to allegations of law as to

factors determining proper forum, and denies the conclusion of law in paragraph 7 of the petition, while denying the allegation that there was no need to change the original forum.

8. It denies Assistant U.S. Attorney Stephen Froot advised the IRS that the summons was overbroad, admits the IRS withdrew the first summons, admits on April 5, 1991, a new summons was issued, and does not respond to allegations and characterizations regarding the comparison of the two summonses, as they are attached to the petition and speak for themselves.

9. It does not respond to the allegation of law regarding proper venue and denies the IRS engaged in forum shopping or withdrew the first summons for reasons relating to judicial precedent.

10. It does not respond to the allegations of law contained in paragraph 10 and denies service of the summons on the New Hampshire office of Merrill Lynch is inappropriate.

11. It denies the summonses issued with respect to the petitioner constitute harassment, does not respond to characterization as to the similarity of the summonses, as the documents speak for themselves, admits petitioner moved to quash the summons served in New York, admits the IRS withdrew the summons, denies the characterization that the summons was reissued, and is without knowledge as to whether counsel for the petitioner duplicated his efforts and charged his client therefor.

12. It denies a Justice Department

referral is in effect with respect to the taxpayer, does not respond to the allegations of law contained in paragraph 12, and denies the remaining allegations of fact in paragraph 12.

13. It admits the summons requests taxpayer records for the years 1985 through 1989. It denies the IRS audit of the taxpayer is limited to 1988. With respect to petitioner's allegations of his attempts to assemble records requested by the summons, the United States avers that production of documents by the petitioner is not requested by, and is not responsive to, the summons at issue in this action served on a third-party recordkeeper for records kept by that third-party recordkeeper. Responding to petitioner's allegations, however, it admits the IRS

has insisted on compliance with the summons and would not accept a partial production of documents produced by the petitioner; it denies the summons is vague or overbroad or violates petitioner's rights.

14. Paragraph 14 of the petition contains allegations of law to which no response is required.

15. It denies the allegations of fact contained in paragraph 15 and does not respond to the allegations of law contained therein.

16. It denies the allegations of fact contained in paragraph 16 and does not respond to the allegations of law contained therein.

17. It denies petitioner is entitled to an evidentiary hearing.

18. It admits the United States received a copy of this petition that petitioner's counsel certifies was sent by him, but is without knowledge or information regarding service upon the party summoned; it admits a certificate of service is attached to the petition.

19. The United States avers that the summons at issue does not seek production of documents by the petitioner, and any such production is not responsive to the summons, which seeks records from third-party recordkeepers. Responding to petitioner's allegations, it admits petitioner's representative conferred with the Revenue officer investigating this matter. It admits the IRS has insisted on compliance with the summons, admits petitioner offered to produce some of the

requested documents, but denies petitioner agreed to locate and produce all requested documents.

WHEREFORE, the United States prays the petition be dismissed and the United States be granted such other and further relief as this Court deems proper and just.

JEFFREY R. HOWARD
United States Attorney

GRETCHEN LEAH WITT
Assistant US Attorney

DAVID S. NEWMAN
Trial Attorney, Tax Division
U.S. Department of Justice
Post-Office Box 55
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6550

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and the attorney of record for each other party by mail on June 19, 1991.

David S. Newman

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RAYMOND H. COPP, JR., Taxpayer-Petitioner	)	91-11214-N
v.	)	
UNITED STATES OF AMERICA, Respondent.	)	

UNITED STATES' MOTION FOR PROTECTIVE ORDER

NOW COMES the respondent, the United States of America, by its attorney, Wayne A. Budd, United States Attorney for the District of Massachusetts, and moves this Court, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, for a protective order against answering petitioner's interrogatories on the grounds that discovery is not appropriate in this proceeding to determine the validity of an Internal Revenue summons. A

memorandum of law is filed herewith and in support hereof.

For the foregoing reason, the United States prays this Court issue a protective order with respect to petitioner's interrogatories served in this action.

WAYNE A. BUDD
United States Attorney

SUSAN M. POSWISTILO
Assistant United States Attorney

DAVID S. NEWMAN
Trial Attorney,
Tax Division
U.S. Department of Justice
Washington, D.C. 20044
Telephone: (202) 307-6550

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No.
91-11214-N

RAYMOND H. COPP, JR.
Petitioner, Taxpayer

V.

UNITED STATES OF AMERICA
Respondent

ORDER

August 7, 1991

COHEN, M.J.

Pursuant to Rules 7.1(d) and (e) of the Local Rules of this Court (effective September 1, 1990), and upon review of the relevant pleadings, the United States' Motion for Protective Order (#09) is allowed.

In support of its motion, the United States says that - in view of the prior

declaration by Internal Revenue Agent Van Loan to the effect that there had been no "referral" to the Justice Department - petitioner has not presented a scintilla of evidence supporting the so-called "information and belief" averment that there had been a referral, and thus, under the "bright line" test set forth in 26 U.S.C. § 7602(c), no discovery is appropriate.

In opposition to the motion, petitioner points to United States v. Michaud, 907 F.2d 750 (7th Cir. 1990) (en banc), and United States v. Stuart, 489 U.S. 353 (1989), and suggests that the test encompasses more than simply "Justice Department referral" vel non.

Petitioner's argument, however, puts the cart before the horse. If the

government is correct in its position - a point which is not as erroneous as suggested by petitioner[1] - that is a matter which should first be resolved[2]

---

[1] The Supreme Court in Stuart did not reach that particular issue, since it simply held that § 7602(c) did not apply to a request for information by a foreign government.

The en banc panel in Michaud - albeit suggesting that the "institutional commitment" test set forth in United States v. LaSalle National Bank, 437 U.S. 298 (1978), survived the amendments to § 7602(c) - remanded the matter because of ambiguities in the record. And Judge Posner, in dissent, joined by Judges Easterbrook, Ripple, and Manion, has set forth a persuasive and convincing argument to the effect that Congress meant what it said, and said what it meant, and that Section 7602(c)- permits the issuance of a summons prior to Justice Department referral even if criminal offenses will be investigated. Michaud, supra, at 755-57.

[2] In the context of a motion to dismiss and/or for summary judgment, or otherwise. If the district judge should determine that the government is correct in its position, then no discovery

before permitting the petitioner to rummage through the government files.[3]

The United States' Motion for Protective Order (# 09) is accordingly allowed.

Lawrence P. Cohen [s]
UNITED STATES MAGISTRATE JUDGE

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whatsoever will be required.

[3] Insofar as this court can determine, the interrogatories propounded by petitioner do not bear directly on the question of "Justice Department referral," or relevancy.

Indeed, many of those interrogatories are clearly overbroad, seeking information about that which the government has discovered to date, not to mention the names of "snitches". To this extent, it is clear that petitioner seeks to "rummage."

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RAYMOND H. COPP, JR., Taxpayer-Petitioner	)	91-11214-N
v.	)	
UNITED STATES OF AMERICA, Respondent.	)	

PETITIONER'S MOTION TO RECONSIDER MAGISTRATE COHEN'S ORDER OF AUGUST 7, 1991 AND/OR STAY SAID ORDER UNTIL AUGUST 26, 1991 OR IF THE RESPONDENT REQUESTS INTERLOCUTORY RELIEF PURSUANT TO 28 U.S.C. 1292(b) TO SUCH TIME AS THE FIRST CIRCUIT RULES ON SAID INTERLOCUTORY RELIEF

Introduction

This Motion is brought pursuant to Rule 2 of the Magistrate's Rule of Court seeking reconsideration of Magistrate Cohen's Order of August 7, 1991. Petitioner is attaching as Exhibit "A" the order of Judge Stahl in the Federal District Court of New Hampshire, dated

August 16, 1991.

Petitioner, through his attorney represents as follows:

1. That Petitioner has filed eight petitions to quash third party Internal Revenue Service summonses in the District Court of New Hampshire under the consolidated number of 91-069-S.

2. That similarly to the pending Massachusetts action in this case, there were two motions before the court: (1) respondent United States' Motion for a Protective Order and (2) Respondent United States' Motion For Summary Denial of the Petition to Quash.

3. That Petitioner through his

attorney in the consolidated New Hampshire action filed a set of interrogatories substantially similar to those filed in this matter, for which the Respondent sought a protective order.

4. That Judge Stahl in the New Hampshire action has determined that the "sole criminal purpose" test of United States v. LaSalle National Bank, 437 U.S. 298 (1978) has survived TEFRA, 26 U.S.C. § 7602(b) and (c)(2). See attached slip opinion, p.6. Further, the District Court certified the matter for an interlocutory appeal pursuant to 28 U.S. C. SS 1292 (b). Id. Judge Stahl gave the United

States ten (10) days to file an interlocutory appeal, August 26, 1991.

WHEREFORE, Petitioner requests that Magistrate Cohen either reconsider his decision in light of Judge Stahl's order of August 16, 1991 or alternatively stay his order until the later of August 26, 1991 or if the Respondent requests interlocutory relief pursuant to 28 U.S.C. 1292(b) until such time as the First Circuit rules on said interlocutory appeal.

Respectfully submitted for
Petitioner by his attorney,

Alfred D. Ellis, Esquire
BBO #153280
CHERWIN & GLICKMAN
One International Place
Boston, MA 02110
Tel. (617) 330-1625

Dated: August 21, 1991

CERTIFICATE OF SERVICE

I, Alfred D. Ellis, hereby certify that on the 21st day of August, 1991, I served a copy of the within Petitioner's Motion to Reconsider Magistrate Cohen's Order of August 7, 1991 by first class mail, postage prepaid to David S. Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 55, Ben Franklin Station, Washington, D.C. 20044.

Alfred D. Ellis

Alfred D. Ellis

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RAYMOND H. COPP, JR., Taxpayer-Petitioner	)	91-11214-N
v.	)	
UNITED STATES OF AMERICA, Respondent.	)	

UNITED STATES' AMENDED ANSWER AND COUNTERCLAIM FOR SUMMARY ENFORCEMENT

NOW COMES the United States of America and asserts, for its amended answer to the above-captioned petition to quash, as follows:

The United States responds to the first unnumbered paragraph of the petition as follows: It admits it issued a summons to Goldman Sachs & Co. ("Goldman Sachs") on January 11, 1991, but denies the date of issuance alleged, a true copy of that

summons is attached to the petition without an identifying exhibit number; it admits taxpayer filed a petition to quash as alleged, admits docketing in the Southern District of New York, as alleged, admits withdrawal of the summons, admits serving a new summons on the Boston office of Goldman Sachs, but does not respond to allegations regarding comparisons of the two summonses, copies of which are attached to the petition, as those documents speak for themselves.

The United States responds to the numbered allegations of the petition as follows:

1. It admits the allegations of paragraph 1.

2. It admits the allegations of paragraph 2.

3. It admits the allegations of paragraph 3.

4. It admits the allegations of paragraph 4, except that the summons is not identified by exhibit number.

5. It responds to the allegations of paragraph 5 by asserting that the summons, a copy of which is attached to the petition, speaks for itself as to its contents.

6. It admits the allegations of paragraph 6.

7. It denies the IRS was forum shopping, does not respond to the allegations of law regarding proper forums, denies New York is the appropriate forum for this action, is without knowledge or information sufficient to

form a belief as to where Goldman Sachs keeps its clients' records, does not respond to allegations of law as to factors determining proper forum, and denies the conclusion of law in paragraph 7 of the petition, while denying the allegation that there was no need to change the original forum.

8. It denies Assistant U.S. Attorney Stephen Froot advised the IRS that the summons was overbroad, admits the IRS withdrew the first summons, admits on April 5, 1991, a new summons was issued, and does not respond to allegations and characterizations regarding the comparison of the two summonses, as they are attached to the petition and speak for themselves.

9. It does not respond to the allegation of law regarding proper venue

and denies the IRS engaged in forum shopping or withdrew the first summons for reasons relating to judicial precedent.

10. It does not respond to the allegations of law contained in paragraph 10 and denies service of the summons on the Boston office of Goldman Sachs & Co. is inappropriate.

ii. it denies the summonses issued with respect to the petitioner constitute harassment, does not respond to characterization as to the similarity of the summonses, as the documents speak for themselves, admits petitioner moved to quash the summons served in New York, admits the IRS withdrew the summons, denies the characterization that the summons was reissued, and is without knowledge as to whether counsel for the

petitioner duplicated his efforts and charged his client therefor.

12. It denies a Justice Department referral is in effect with respect to the taxpayer, does not respond to the allegations of law contained in paragraph 12, and denies the remaining allegations of fact in paragraph 12.

13. It admits the summons requests taxpayer records for the years 1985 through 1989. It denies the IRS audit of the taxpayer is limited to 1988. With respect to petitioner's allegations of his attempts to assemble records requested by the summons, the United States avers that production of documents by the petitioner is not requested by, and is not responsive to, the summons at issue in this action served on a third-party recordkeeper for

records kept by that third-party recordkeeper. Responding to petitioner's allegations, however, it admits the IRS has insisted on compliance with the summons and would not accept a partial production of documents produced by the petitioner; it denies the summons is vague or overbroad or violates petitioner's rights.

14. Paragraph 14 of the petition contains allegations of law to which no response is required.

15. It denies the allegations of fact contained in paragraph 15 and does not respond to the allegations of law contained therein.

16. It denies the allegations of fact contained in paragraph 16 and does not respond to the allegations

of law contained therein.

17. It denies petitioner is entitled to an evidentiary hearing.

18. It admits the United States received a copy of this petition that petitioner's counsel certifies was sent by him, but is without knowledge or information regarding service upon the party summoned; it admits a certificate of service is attached to the petition.

19. The United States avers that the summons at issue does not seek production of documents by the petitioner, and any such production is not responsive to the summons, which seeks records from third-party recordkeepers. Responding to petitioner's allegations, it admits petitioner's representative conferred with the Revenue officer investigating this

matter. It admits the IRS has insisted on compliance with the summons, admits petitioner offered to produce some of the requested documents, but denies petitioner agreed to locate and produce all requested documents.

WHEREFORE, the United States prays the petitioner be dismissed and the United States be granted such other and further relief as this Court deems proper and just.

COUNTERCLAIM OF THE UNITED STATES

For its counterclaim in the above-captioned case, the United States asserts as follows:

1. The petitioner, Raymond H. Copp, Jr., also the taxpayer whose tax liabilities are the subject of the

Internal Revenue Service investigation, brought this action to quash the Internal Revenue Service summons served on Goldman Sachs & Co. (the "Summons").

2. This Court has subject matter jurisdiction to enforce and to compel compliance with Internal Revenue Service summons pursuant to 26 U.S.C., Sections 7402(b), 7604(a), and 7609(h)(1).

3. Revenue Agent Van Loan is conducting an investigation to determine the correct federal income tax liabilities of Raymond H. Copp, Jr. ("the taxpayer"), for the taxable years 1985 through 1989.

4. On April 10, 1991, the Internal Revenue Service issued a summons, in accordance with 26 U.S.C. Section 7602, with respect to records of Raymond H. Copp, Jr., which records were in the

possession of a third-party recordkeeper, Goldman Sachs & Co. The summons was served on Goldman Sachs & Co. on April 10, 1991, on which date notice was given Raymond H. Copp, Jr., by certified mail, in accordance with 26 U.S.C. Section 7609.

5. Revenue Agent Ernest Van Loan, who issued the summons, a photocopy of which is attached to his declaration filed herewith, is a Revenue Agent of the Examination Division of the Internal Revenue Service, with a post of duty in Laconia, New Hampshire. Revenue Agent Van Loan is authorized to utilize Internal Revenue Service summonses issued under the authority of Section 7602 of the Internal Revenue Code of 1954, 26 U.S.C., Section 7602 and Treasury Regulations, Section 301.7602-1; IRS Delegation Order No. 4 (as

revised).

6. The summoned person, Goldman Sachs & Co., is a third party recordkeeper, within the meaning of Section 7609 of the Internal Revenue Code, 26 U.S.C., with offices at Exchange Place, 53 State Street, Boston, Massachusetts, within the jurisdiction of this Court.

7. As of the date of this response, there is no "Justice Department referral," as that tern is described in 26 U.S.C., Section 7602(c), in effect with respect to the taxpayer for any of the years under investigation.

8. Revenue Agent Van Loan has reason to believe the taxpayer engaged in financial transactions with Goldman Sachs & Co. during the years 1985 through 1989, the years under investigation. It is

believed therefore, that Goldman Sachs & Co. is in possession of books, records, or other data, and testimony relating to the taxpayer's correct income tax liabilities for the years under investigation.

9. The petitioner commenced the above-titled proceeding to quash the Summons within 20 days of the giving to him of notice of thereof, on April 10, 1991.

10. On May 8, 1991, Goldman Sachs & Co., the summoned person, failed to appear in response to the summons, to give testimony, or to produce the summoned data for examination as required by the summons; these failures continue to the date of this motion.

11. The testimony and the books, records, papers and other data demanded by

the summonses are not already in the possession of the Internal Revenue Service.[1]

12. The testimony and the books, records, papers and other data demanded by the summons are necessary for the correct determination of the federal income tax liabilities of Raymond H. Copp, Jr., for the years under investigation and might shed light on the correctness of the taxpayer's federal income tax returns or his correct federal income tax liabilities for the taxable years under investigation.

13. All procedures required by the Internal Revenue Code, as amended, were followed with respect to this summons.

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[1] As described in the Declaration of Ernest Van Loan, one of the summoned documents was provided to the IRS by taxpayer's representative.

14. The United States seeks, pursuant to Section 7609(b)(2)(A), to compel compliance with the Summons.

For the foregoing reasons, the United States prays this Court order the enforcement of the IRS administrative summons served upon Goldman Sachs & Co. and grant the United States such other and further relief as the Court deems proper and just.

WAYNE A. BUDD
United States Attorney

SUSAN M. POSWISTILO
Assistant US Attorney

DAVID S. NEWMAN
Trial Attorney,
Tax Division
U.S. Department of Justice
Post Office Box 55
Ben Franklin Station
Washington, D.C. 20044
Tel. (202) 307-6550

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party with a courtesy to the summoned party by mail on September 23, 1991.

_____

David S. Newman

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RAYMOND H. COPP, JR., Taxpayer-Petitioner	)	91-11214-N
v.	)	
UNITED STATES OF AMERICA, Respondent.	)	

DECLARATION OF REVENUE AGENT
ERNEST VAN LOAN

Ernest Van Loan, pursuant to the provisions of 28 U.S.C., Section 1746 certifies that:

1. I am a Revenue Agent of the Examination Division of the Internal Revenue Service, employed in the New Hampshire Internal Revenue District, with a post of duty at 719 N. Main Street, Laconia, New Hampshire.

2. I am presently conducting an

examination to determine the correct federal income tax liability of Raymond H. Copp, Jr. ("the taxpayer"), for the taxable years 1985 through 1989.

3. I an authorized to utilize Internal Revenue Service summonses issued under the authority of Section 7602 of the Internal Revenue Code, 26 U.S.C., Section 7602 and Treasury Regulations, Section 301.7602-1; IRS Delegation Order No. 4 (as revised).

4. As of the date of this declaration, there is no "Justice Department referral," as that term is described in 26 U.S.C., Section 7602(c), in effect with respect to the taxpayer for any of the taxable years 1985 through 1989.

5. During the course of my

examination of the taxpayer, I learned the taxpayer engaged in financial transactions with Goldman Sachs & Co. during the year 1988, one of the years under examination, as the taxpayer held an account with that firm during that year. Based upon this and other information disclosed by my investigation I believe the taxpayer may have engaged in transactions with Goldman Sachs & Co. during the other years under investigation. Information about any such accounts will assist in the determination of the amounts of income earned during the years under investigation.

6. Pursuant to my examination and in accordance with Section 7602 of the Internal Revenue Code, I issued an Internal Revenue Service summons to Goldman Sachs & Co., a photocopy of that

summons was attached to the petition filed in this action, and a photocopy is attached to this declaration and designated Exhibit A.

7. Service of the summons was made and notice of the summons was given as required by law, as is evidenced by the completed Certificates of Service and of Notice on Exhibit A, page 2.

8. All procedures required by the Internal Revenue Code, were followed with respect to this summons.

9. The above-titled proceeding was commenced within 20 days of the giving of notice of the summons to the petitioner.

10. The summoned person failed to appear in response to the summons, to give testimony, or to produce the summoned data for examination as required by the

summons; these failures continue to the date of this declaration.

11. With the exception of a single document provided by the taxpayers representative, the testimony and the books, records, papers, and other data demanded by the summons issued to and served upon Goldman Sachs & Co. are not already in the possession of the Internal Revenue Service.

12. The testimony and the books, records, papers, and other data demanded by the summons issued to and served upon Goldman Sachs & Co. are necessary for the correct determination of the federal income tax liability of the taxpayer for the years under investigation.

13. Documents shown to me by the taxpayer's power of attorney established

that taxpayer spent in excess of one million dollars ($1,000,000) in real estate purchases in 1988.

14. The taxpayer's power of attorney stated that taxpayer made the purchases of real estate at issue with funds from rollovers of bonds and an inheritance from his grandparents 20 years ago.

15. The summoned documents will assist in the tracing of any funds used by the taxpayer for the above-described purchases of real estate.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Laconia, New Hampshire, this 10th day of September, 1991.

_____

Ernest Van Loan,
Revenue Agent
Examination Division
Internal Revenue Service

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party and the summoned person by mail on September 23, 1991.

_____

David S. Newman

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RAYMOND H. COPP, JR., Taxpayer-Petitioner	)	91-11214-N
v.	)	
UNITED STATES OF AMERICA, Respondent.	)	

UNITED STATES' MOTION FOR
SUMMARY ENFORCEMENT

The United States of America hereby moves this Court to enforce the summons issued by the Internal Revenue Service on April 10, 1991, and served on Goldman Sachs & Co. with respect to records of the petitioner in this action.

As grounds for its motion, the United States asserts that the summons was duly issued in good faith and all statutory requirements have been met for enforcement. In support of its motion, the

United States files herewith the declaration of Revenue Agent Ernest Van Loan and a memorandum of law.

For the foregoing reasons, the United States prays this Court order the enforcement of the IRS administrative summons.

ALLOWED. On the basis of the uncontroverted Van Loan affidavit, there is no criminal referral. The summons was issued in good faith to make a conch determinations of the petitioner's federal income tax liabilities, if any, for the taxable years under investigation, and all of this required procedures of the Internal Revenue Code have been followed.

A. David Mazzone

WOJ 11/27/91

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RAYMOND H. COPP, JR., Taxpayer-Petitioner	)	91-11214-N
v.	)	
UNITED STATES OF AMERICA, Respondent.	)	

ENFORCEMENT ORDER AND JUDGMENT

This matter having come before the Court on the United States' motion for summary enforcement of an administrative Internal Revenue Service summons served upon Goldman Sachs & Co. as third-party recordkeeper of the records of Raymond Copp. Jr., the parties having had full opportunity to be heard, and it appearing that the summons issued by Revenue Agent Ernest Van Loan and served upon Goldman Sachs & Co. on April 10, 1991: (1) was

issued for the purposes of investigating the correct federal income tax liabilities for Raymond H. Copp, Jr., for the years 1985 through 1989, and ascertaining whether the Raymond H. Copp, Jr. has committed any offense connected with the administration or enforcement of the internal revenue laws, which are legitimate purposes of the use of administrative summonses, (2) that the summoned testimony and data may be relevant to those determinations, (3) that the testimony and other data sought are not already in the possession of the Internal Revenue Service, and (4) that the administrative steps required by the Internal Revenue Code have been followed, it is therefore

ORDERED, ADJUDGED and DECREED that

the Goldman Sachs & Co. appear before Revenue Agent Ernest Van Loan, or his designated representative, at 2:30 p.m. on December 13, 1991, at the offices of Goldman Sachs & Co., Exchange Place, 53 State Street, Boston, Massachusetts, then and there to be sworn, to give testimony, and to produce the books, records, papers, and other data as demanded by the summons served upon it on April 10, 1991, for examination and for copying by photographic or other mechanical means of reproduction, with such examination and copying to continue from day-today until completed.

DONE and ORDERED this 27th day of November, 1991, at Boston, Massachusetts.

A. David Mazzone
UNITED STATES DISTRICT JUDGE

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party and the summoned person by mail on September 23, 1991

David S. Newman

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

RAYMOND H. COPP, JR.,	)	
	)	91-069-S
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	

O R D E R

In this consolidated civil action, petitioner Raymond E. Copp, Jr. moves to quash eight third-party Internal Revenue Service ("IRS') administrative summonses which seek certain of Petitioner's financial records from the years 1985 through 1991. The action is brought pursuant to 26 U.S.C. S 7609 (b) (2), with jurisdiction being grounded upon 26 U.S.C. § 7609 (h) (1). There are two Motions before the Court: (1) respondent United

States, motion for a protective order, and (2) respondent United States, motion for summary denial of petition to quash and for enforcement of IRS summons served upon Kevin F. Sullivan, Esquire.

1. Motion for Protective Order

Respondent has filed the above-referenced motion pursuant to Rule 26(c), Fed. R. Civ. P., asking this Court to excuse it from answering certain interrogatories designed to elicit whether respondent is contemplating a criminal referral to the Justice Department. In support of its motion, respondent argues that even if it were contemplating a criminal referral, such referral would not be improper. Therefore, it contends, discovery on this matter is irrelevant. Petitioner responds that the true purpose

of the summons is to gather information for an eventual criminal referral to the Justice Department and that, under relevant case law, such purpose is not allowable.

Before the IRS is entitled to enforcement of a challenged summons, it must make a prima facie showing of "good faith." United States v. Michaud, 907 F.2d 750, 752 (7th Cir. 1990) The prima facie case must include the following elements:

> [The IRS] must show [1] that the investigation will be conducted pursuant to a legitimate purpose, [2] that the inquiry may be relevant to the purpose, [3] that the information sought is not already within the [Service's] possession, and [4] that the administrative steps required by the Code have been followed.

Id. (quoting United States v. Powell, 379

U.S. 48, 57-58 (1964)). Furthermore, 26 U.S.C. § 7602(c) specifically bans the issuance of administrative summonses when a Justice Department referral is in effect.

Here, petitioner contends that the above-noted criminal referral allegedly contemplated by the IRS makes the purpose of the summons illegitimate. In so doing, it relies on United States v. LaSalle National Bank, 437 U.S. 298 (1978), where the Supreme Court read 26 U.S.C. § 7602 as including a prohibition on the IRS's use of an administrative summons solely for the purpose of criminal investigations prior to Justice Department referrals. See id. at 316-17. ("We shall not countenance delay in submitting a recommendation to the Justice Department when there is an

institutional commitment to make the referral and the [IRS] merely would like to gather additional evidence for the prosecution.")

Respondent does not deny that a future referral is possible; rather, it argues that the 1982 amendments to 26 U.S.C. S 7602, passed as part of the Tax Equity and Fiscal, Responsibility Act of 1982 (hereinafter "TEFRA") and codified at § 7602(b)[1] and 602(c)(2)[2] eliminate the

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[1] 26 U.S.C. § 7602(b) provides:

Purpose may include inquiry into offense.- The purposes for which the Secretary may [issue the summons] include the purpose of inquiring into any offence connected with the administration or enforcement of the internal revenue laws.

[2] In pertinent part, 26 U.S.C. § 7602 (c) (2) states:

Justice Department referral In effect.- For purposes of this subsection-

"sole criminal purpose" defense recognized in LaSalle. It is respondent's position that § 602(c) contemplates a "bright-line" rule whereby the only relevant inquiry is whether a Justice Department referral actually has been made.

The question of whether LaSalle's "sole criminal purpose" defense survived the TEFRA has engendered a split of authority. Compare, e.g., .Michaud, supra, at 752 and Hintze v. I.R.S., 879 F.2d 121, 127 (4th Cir. 1989) (recognizing continued

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> (A) In general. A Justice Department Referral is in effect with respect to any person if -
>
> (i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws[.]

existence of "sole criminal purpose" defense) with LaMura v. United States, 765 F.2d 974, 980 n. 9 (11th Cir. 1985); Pickel v. United States, 746 F.2d 176, 183-84 (3rd Cir. 1984); and Segmond v. United States, 589 F. Supp. 568, 573 (S.D.N.Y. 1984) (embracing the "bright-line" view respondent urges here). The Supreme Court has revisited LaSalle in light of the 1982 amendments to 26 U.S.C. § 602. See United States v. Stuart, 489 U.S. 353, 363 (1989). "When Congress codified the essence of our holding [in LaSalle] in § 7602(c), it apparently shared our concern about permitting the IRS to encroach upon the rights of potential criminal defendants.") However, even this statement has been accorded contradictory interpretations. Compare

Michaud, supra, at 752 n 2 (Bauer J.) and Hintze, supra, at 127 (citing Stuart as supporting the view that the "sole criminal purpose" defense has continuing-vitality) Michaud, supra, at 757 (Posner, J., dissenting) (arguing that the majority opinion "misunderstands Stuart" and "misunderstands section 7602(c) and its interplay with 7602(b)").

The First Circuit has not yet had occasion to address Stuart's impact on this issue. However, in its most recent foray into the realm of the administrative summons, the court indicated, in dicta, its concurrence in the view that the "sole criminal purpose" defense survived the enactment of TEFRA. See United States v. Lawn Builders of New England, Inc., 856 F.2d 388, 391-92 (1st

Cir. 1988) ("[T]he IRS must not have abandoned the pursuit of civil tax determination or collection" in order to be entitled to enforcement) (citing LaSalle, supra). Thus, in this Circuit, petitioner's "sole criminal purpose" defense appears to be valid.

However, the Court is of the opinion that this is a controlling question of law as to which there is a substantial round for difference of opinion, and that an immediate appeal may advance materially the ultimate termination of the litigation.[3] Accordingly, pursuant to its authority under 28 U.S.C. § 3.292(b), this Court grants respondent leave to file an

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[3] of particular concern to this Court is the interpretation the First circuit will give to the Stuart decision.

lnterlocutory appeal. Such appeal must be filed within ten days of the entry of this Order. The remainder of the action, including petitioner's request for an evidentiary hearing, is stayed pending respondent's decision on whether to take an interlocutory appeal and any consideration the First circuit might give this matter.

Accordingly, respondent's motion for a protective order is denied insofar as it is premised upon the "bright line" interpretation of 26 U.S.C. § 7602(b) and § 7602(c). Nonetheless, the Court will not direct respondent to answer the interrogatories at issue until such time as both the instant issue and petitioner's request for an evidentiary hearing are decided. See United States v. Freedom

Church, 613 F.2d 316, 323 1st Cir. 1979) and United States v. Salter, 432 F.2d 697, 700 (1st Cir. 1970) (indicating that, upon the required showing, the Court first should hold an evidentiary hearing and then determine whether further exploration, through discovery, seems to be in order)

Motion for Summary Denial of Petition to Quash and for Enforcement of IRS Summons Served Upon Kevin F. Sullivan, Esq.

As noted in section 1 of this Order, consideration of this motion is stayed pending respondent's decision on whether to take an interlocutory appeal of the Court's denial of its motion for a protective order and any decision the First Circuit might render thereon.

3. Conclusion

For the reasons herein stated, respondent's motion for a protective order [document no. 21] is denied. However, respondent need not answer the interrogatories at this time. Respondent's motion for summary denial of the petition to quash and for enforcement of the summons served upon Kevin F. Sullivan, Esq. [(document no. 7] is stayed pending its decision on whether to take an interlocutory appeal and any consideration the First Circuit might give the matter. If respondent does not take an interlocutory appeal, the court clerk is requested to return this file to the Court by Monday September 16, 1991.

SO ORDERED

Norman Stahl [s]
United States District Judge

August 16, 1991

cc: John F. Bielagus, Esq.
Alfred D. Ellis, Esq.
David S. Newman, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

RAYMOND H. COPP, JR.,	)	
	)	91-069-S
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	

O R D E R

In this consolidated civil action, petitioner Raymond H. Copp, Jr. moves to quash eight third-party Internal Revenue Service ("IRS") administrative summonses which seek certain of petitioner's financial records from the years 1985 through 1991.[1] By Order of August 16, 1991, this Court denied respondent's

[1] For a more detailed recitation of the background of this litigation, please see the Court's August 16, 1991, Order.

motion for a protective order, but afforded respondent an opportunity to take an interlocutory appeal of said denial. Of particular interest to the Court was whether petitioner's "sole criminal purpose" defense was still viable in light of the 1982 amendments to 26 U.S.C. § 7602, passed as part of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). Though the First Circuit seems to accord the defense continuing vitality despite the 1982 amendments, see United States v. Lawn Builders of New England, Inc., 856 F.2d 388, 391-92 (1st Cir. 1988), such view has come under strong and persuasive attack. See, e.g., United States v. Michaud, 907 F.2d 750, 757 (7th Cir. 1990) (Posner, J., dissenting); La Mura v. United States, 765 F.2d 974, 980

n. 9 (11th Cir. 1985); Pickel v. United States, 746 F.2d 176, 183-84 (3rd Cir. 1984).

Regrettably, respondent has declined to take the appeal and moves this Court to vacate its August 16, 1991, Order. In so doing, respondent again seeks a protective order enabling it to avoid answering certain interrogatories served upon it by petitioner. In response, petitioner seeks an order directing respondent to answer the interrogatories.

A review of pertinent authority from this Circuit reveals that neither request can be granted at this time. Where, as here, petitioner has made a showing

sufficient[2] to pursue a "sole criminal purpose" defense, the Court should

> proceed directly to a hearing at which, if desired, the summonee could examine the agent who issued the summons, concerning his purpose. The court could then, by observation and, where necessary, its own questioning of the agent, make its own determination of whether exploration, as by discovery, seemed to be in order.

United States v. Salter, 432 F.2d 697, 700 (1st Cir. 1970) (citation omitted); see also United States v. Freedom Church, 613 F.2d 316, 323 (1st Cir. 1979)

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[2] The Court finds petitioner's allegation that the summonses seek evidence from years outside the scope of petitioner's civil audit, see Petition to Quash at ¶ 8, when coupled with the affidavit submitted by petitioner's counsel, see Exhibit A, attached to Petitioner's Memorandum in Response to Defendant's Motion for Summary Denial of Petition, constitute such "sufficient showing."

(affirming right of summoned party who "evinces an interest in taking advantage of the adversary proceeding to which he is entitled" to an evidentiary hearing). Accordingly, the Court directs the parties to appear for an evidentiary hearing at which petitioner may examine the revenue agent who issued the summonses. The hearing will be held on Wednesday, December 11, 1991, at 10:00 a.m. The Court defers ruling upon all outstanding motions in this matter until after this hearing.

SO ORDERED.

Norman Stahl [s]
United States District Judge

December 3, 1991

cc: John F. Bielagus, Esq.
Alfred D. Ellis, Esq.
David S. Newman, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RAYMOND H. COPP, JR., Taxpayer-Petitioner	)	91-11214-N
v.	)	
UNITED STATES OF AMERICA, Respondent.	)	

Petitioner's Motion to Reconsider and/or to Alter or to Amend the Decision and Order of November 27, 1991

Introduction

This Motion is brought pursuant to Rule 59 of the Federal Rules of Civil Procedure to reconsider and/or to alter or amend the decision and order of November 27, 1991.

In support of this Motion, Petitioner represents as follows:

(1) That by order dated December 3, 1991, the U.S. District Court

of New Hampshire has granted Petitioner, in a parallel case, an evidentiary hearing to pursue a sole criminal purpose defense. Order dated December 3, 1991 (Exhibit "A").

(2) That if this Court agrees to reconsider and/or alter or amend its order and judgment of December 3, 1991, this Court will be empowered to receive and evaluate the findings and conclusions from that evidentiary hearing. In that evidentiary hearing the Petitioner will be able to pursue the sole criminal purpose defense by questioning the Revenue Agent. That course

of action was requested in this case and implicitly rejected by this Court.

(3) That even if this Court does not agree with the findings and conclusions from the New Hampshire Federal District Court, by setting forth in writing its reasoning in support of its determinations, this Court will assist the Appeals Court in determining whether or not the sole criminal purpose defense will be given continuing vitality, i.e., reconciling this difference in holdings between these sister District Courts in the First Circuit.

(4) That Petitioner incorporates the reasons set forth in paragraphs 1-10 from the accompanying Motion to Stay the Enforcement Order and Judgment.

(5) In summary, this Court ought to reconsider its order of November 27, 1991 by allowing the record to be reopened to receive the findings and conclusions from the evidentiary hearing to be held in New Hampshire, and thereafter, setting forth in writing its reasoning on altering or affirming its decision and order of November 27, 1991.

Respectfully submitted for
Petitioner by his attorney,

Alfred D. Ellis, Esquire
CHERWIN & GLICKMAN
One International Place
Boston, MA 02110
Tel. (617) 330-1625

Dated _____

CERTIFICATE OF SERVICE

I, Alfred D. Ellis, hereby certify that on the 6th day of December, 1991, I served a copy of the within Petitioner's Motion to Reconsider and/or to Alter or to Amend the Decision and Order of November 27, 1991 by first-class mail, postage prepaid to David S. Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 55, Ben Franklin Station, Washington, D.C. 20044.

Alfred D. Ellis

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

RAYMOND H. COPP, JR.,	)
	)
v.	)
	)
UNITED STATES OF AMERICA,	)

AFFIDAVIT OF COUNSEL
FOR PETITIONER

NOW COMES Alfred D. Ellis, attorney for the Petitioner, Raymond H. Copp, Jr. and swears under oath as follows:

(1) That in preparing this affidavit he has reviewed his law firm's time records and file correspondence relating to the Petitioner.

(2) That, he is a member of the bar of the Commonwealth of Massachusetts and the Federal

District Court of Massachusetts.

(3) That he has been allowed to practice in the Federal District of New Hampshire Pro hoc vice for the purposes of all pending Internal Revenue Service quash petitions concerning the Petitioner Raymond H. Copp, Jr.

(4) That on or about February 12, 1991, he submitted his appearance before the Internal Revenue Service on behalf of the Petitioner, Raymond H. Copp, Jr. (see Exhibit "A" attached).

(5) That on or about March 4, 1991, he received a document request

for production of documents due on March 18, 1991 for the taxpayer for tax years 1985, 1986, 1987, 1988 and 1989 from Internal Revenue Service Agent Ernest Van Loan (see Exhibit "B" attached)

(6) That prior to March 4, 1991, all audit request submitted by Revenue officer Van Loan with respect to the petitioner were for Tax Year 1988 - 1040.

(7) That on or about March 15, 1991, by letter he responded to Ernest Van Loan that the taxpayer would be in Boston the week ending March 22, 1991, and that he would discuss the document request with him (see

Exhibit "C" attached hereto and made a part hereof).

(8) That on or about March 29, 1991, he telephoned Revenue officer Ernest Van Loan and told him that he would have his client assemble the documents requested for the open years 1987 and 1989, but the documents requested for the closed years 1985 and 1986 were not readily available. Upon information and belief, the 1988 documents which were assembled over a five month period had already been submitted to Revenue officer Van Loan by Robert Corallino, CPA, under the earlier filed

power of attorney.

(9) That Mr. Van Loan advised the undersigned attorney that he would check with his supervisor as to whether he could accept the documents from the open years.

(10) That on or about April 4, 1991, Mr. Van Loan advised the undersigned attorney that the Internal Revenue Service would only accept all documents from all five years, including the two closed years, and that the Internal Revenue Service was not interested in receiving documents from the remaining two open years.

SWORN TO under pains and penalties of perjury this 10th day of October 1991.

Alfred D. Ellis, Esquire
CHERWIN & GLICKMAN
One International Place
Boston, MA 02110
Tel. (617) 330-1625

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. 1991

Then personally appeared the above named Alfred D. Ellis and acknowledged the foregoing instrument to be his free act and deed, before me.

Notary Public
My commission expires:

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RAYMOND H. COPP, JR., Taxpayer-Petitioner	)	91-11214-N
v.	)	
UNITED STATES OF AMERICA, Respondent.	)	

NOTICE OF APPEAL

Notice is hereby given that Raymond H. Copp, Jr., Petitioner above named, hereby appeals to the United States Court of Appeals for the First Circuit from the enforcement order and judgment dated on the 27th day of November, 1991, (see copy attached) and from the denial of the Motion for Reconsideration on December

18, 1991 (conveyed verbally by Judge Mazzone's docket clerk).

Respectfully submitted for Petitioner by his attorney,

Alfred D. Ellis, Esquire
CHERWIN & GLICKMAN
One International Place
Boston, MA 02110
Tel. (617) 330-1625

Dated _____

CERTIFICATE OF SERVICE

I, Alfred D. Ellis, hereby certify that on the ____ day of December, 1991, I served a copy of the within Notice of Appeal by first-class mail, postage prepaid to David S. Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 55, Ben Franklin Station, Washington, D.C. 20044

Alfred D. Ellis

15342.1